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GOVERNMENT NOTICE

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

No. R. 310

10 April 2015

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)

REGULATIONS RELATING TO THE PROCEDURE TO BE FOLLOWED WHEN ORAL REQUESTS ARE MADE IN TERMS OF SECTION 30A

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby make regulations relating to the procedure to be followed when oral requests are made in terms of section 30A, under section 44(1)(aD) read with section 30A of the National Environmental Management Act, 1998 (Act No. 107 of 1998), set out in the Schedule hereto.



BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context requires otherwise—

“**disaster**” has the meaning assigned to it in section 1 of the Disaster Management Act, 2002 (Act No. 57 of 2002);

“**emergency situation**” has the meaning assigned to it in section 30A (7) of the Act;

“**the Act**” means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

Purpose

2. The purpose of these Regulations is to set out the procedure for the submission and processing of an oral request for a verbal directive in terms of section 30A (1) of the Act.

Application

3. (1) Any person who reasonably foresees that—

- (a) they may commence with a listed or specified activity identified in terms of the regulations promulgated under section 24 (2) of the Act without an environmental authorisation; and
- (b) commencement with such listed or specified activity would be directly in response to a situation that has arisen suddenly that poses an imminent and serious threat to the environment, human life or property; or
- (c) commencement with such listed or specified activity would be directly in response to a disaster;

may, orally request the competent authority to issue a verbal directive in terms of section 30A (1) of the Act.

- (2) The competent authority may on its own initiative direct a person verbally or in writing to carry out a listed or specified activity, without obtaining an environmental authorisation contemplated in section 24(2)(a) or (b), in order to prevent or contain an emergency situation or to prevent, contain or mitigate the effects of the emergency situation.
- (3) The competent authority must comply with regulations 5, 6 and 8, as the case may be, when acting in terms of subregulation (2) above.
- (4) These Regulations do not apply in the event that a person has already commenced with a listed or specified activity identified in terms of the regulations promulgated in terms of section

24 (2) of the Act without an environmental authorisation or to an incident as provided for in terms of section 30 of the Act.

Circumstances in which an oral request may be made

4. A person may only submit an oral request for a verbal directive in terms of section 30A (1) of the Act in circumstances, where—
- (a) the immediate commencement of the listed or specified activity is necessary to prevent or contain an emergency situation; or prevent, contain or mitigate the effects of an emergency situation; and
 - (b) submitting a written request would defeat the object of the verbal directive.

Information required

5. (1) A person that submits an oral request for a verbal directive in terms of section 30A (1) of the Act must include, where known, the following information as part of the request to the competent authority:
- (a) the nature, scope and possible impact of the emergency situation;
 - (b) the cause of the emergency situation;
 - (c) the proposed measures to prevent or to contain the emergency situation; or to prevent, contain or mitigate the effects of the emergency situation; and
 - (d) the listed or specified activities that will be commenced with in response to the emergency situation.
- (2) In addition to the information required in subregulation (1), the competent authority may request any information that is reasonably required to issue the verbal directive, including the submission of photographs of the emergency situation.

Factors to be considered

6. (1) In considering whether or not to issue a verbal directive in terms of section 30A (1) of the Act, the competent authority must, at least, where information is available, take the following into consideration:
- (a) the nature of the emergency situation;
 - (b) the information contained in the request referred to in section 30A (2) of the Act;
 - (c) whether the emergency situation was caused by or the fault of the person;
 - (d) the principles contained in section 2 of the Act; and

- (e) the prevention, control or mitigation measures to contain effects of the emergency situation and the post-event mitigation or rehabilitation measures that may be required.
- (2) Upon receipt of the oral request for a verbal directive in terms of section 30A (1) of the Act, the competent authority must use the form provided for in Annexure A to these Regulations to record, in writing, all the information required in terms of subregulation (1) above.

Refusal of verbal directive

7. The competent authority may refuse to issue a verbal directive, and instruct the person to submit a written request in terms of section 30A (1) of the Act where, in the opinion of the competent authority the reported circumstance does not fall within—
- (a) an emergency situation or a disaster; or
 - (b) regulation 4 of these Regulations.

Issuing of verbal directive

8. (1) If, in the opinion of the competent authority, the oral request to issue a verbal directive in terms of section 30A (1) of the Act reveals that the—
- (a) circumstance is indicative of an emergency situation as set out in regulation 4; and
 - (b) issuing of a written directive would defeat the objective of the verbal directive,
- the competent authority may issue a verbal directive, after having considered all of the information referred to in regulations 5 (1) and 6 (1) of these Regulations.
- (2) The verbal directive must be issued within six hours after receipt of all information required in terms of these Regulations.
- (3) The verbal directive must be confirmed by the competent authority, in writing, within seven days of the issuance of the verbal directive.
- (4) The competent authority may not issue a verbal directive in terms of section 30A (1) of the Act without first obtaining the information as set out in regulation 5 (1), and considering this information with the information as set out in regulation 6 (1).

Undertaking specific measures

9. The competent authority may direct the person to undertake specific measures within a specific time period in order to prevent, contain or mitigate the effects of the emergency situation.

Written confirmation

10. In the event that a verbal directive is issued, the person who made the oral request must submit a written confirmation of the request within 24 hours of the oral request; by hand, e-mail or facsimile to the competent authority who issued the verbal directive.

Site inspection

11. The competent authority shall, where reasonably possible, dispatch an appropriately qualified and skilled official to assess the scene of the emergency situation or disaster.

Amendment, suspension, revocation

12. The competent authority may amend, suspend or revoke the verbal directive in the event that—
- (a) no written confirmation of the oral request has been received within the timeframe set out in regulation 10;
 - (b) the written confirmation contains facts that are materially different from the oral request; or
 - (c) the official referred to in regulation 11, after having assessed the scene of the emergency situation or disaster, is of the reasonable belief that the circumstances are materially different from the oral request or written confirmation of the oral request.

Written notice of intention to amend, suspend or revoke

13. (1) Should the competent authority decide to amend, suspend or revoke the verbal directive in accordance with regulation 12 of these Regulations, it shall first provide written notice of its intention to amend, suspend or revoke the verbal directive to the person in whose favour the verbal directive was issued and shall give that person 48 hours in which to object to the amendment, suspension or revocation.
- (2) Where a competent authority decides to amend, suspend or revoke the verbal directive, he or she shall provide written reasons for the decision to the person in whose favour the verbal directive was issued.

Reporting requirements

14. (1) The competent authority must, within seven days from date of issue of the verbal directive, report the emergency situation, in writing, to all other relevant authorities that may be responsible for the management thereof and inform the relevant authorities of any verbal directive issued.

- (2) The competent authority must, as soon as reasonably possible and in writing, inform all other relevant authorities that may be responsible for the management thereof of the amendment, suspension or revocation of an issued verbal directive.

Offences

15. It is an offence for any person to, wilfully, knowingly or negligently, provide incorrect or misleading information, orally or in writing, to the competent authority or an environmental management inspector in terms of these Regulations.

Penalties

16. A person convicted of an offence in terms of these Regulations is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Short title and commencement

17. These Regulations are called the Regulations relating to the procedure to be followed when oral requests are made in terms of section 30A (1), 2015 and take effect on the date of publication thereof in the *Gazette*.

ANNEXURE A:

WRITTEN RECORDING OF INFORMATION REQUIRED IN TERMS OF REGULATIONS 5 AND 6

1.	Name and identity number of person making the oral request ("the requester")
2.	Is the requester placing the request in his or her personal capacity or on behalf of a state body/parastatal/corporate entity?
3.	Name of state body/parastatal/corporate entity on whose behalf the request is made; registration number where appropriate and registered street address
4.	If the request is made on behalf of a state body/parastatal/corporate entity, in what capacity is the requester employed by that body?
5.	Location of the emergency situation [Street address and/or GPS coordinates]
6.	The nature of the emergency situation as stated by the requester, including the progression of the emergency (whether or not it has commenced/is imminent/has caused damage at the time of the oral request)

7.	The cause of the emergency situation; including confirmation of whether or not it was caused by the fault of the applicant
8.	The risk of the impact on the environment as a result of the emergency; including an impact which may already have occurred
9.	The risk of the impact on human health and well-being as a result of the emergency; including any impact which may already have occurred
10.	The proposed measures to be taken, including proposed timeframes for actions and whether they will provide a temporary or permanent solution to the situation
11.	What aspect of the emergency each measure will seek to address and how?
12.	The listed or specified activities that will be triggered by the proposed measures

13.	The estimated costs of the measures proposed
14.	Any reasonable alternative measures; including an estimate of the costs thereof
15.	The risk of the impact on the environment of the prevention, control or mitigation measures proposed
16.	Any post-event mitigation or rehabilitation measures that may be required

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GPW does not accept responsibility for notice requests submitted through the discontinued channels as well as for the quality and accuracy of information, or incorrectly captured information and will not amend information supplied.

Thank you!

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info.egazette@gpw.gov.za (only for queries).

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